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August 14, 2006

VIA ELECTRONIC FILING

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Docket No. AB-878
City Of Peoria and The Village of Peoria Heights, IL — Adverse
Discontinuance—Pioneer Industrial Railway Company

STB Docket No. AB-1066X
Central Illinois Railroad Company – Discontinuance Of Service Exemption – In
Peoria County, IL

Dear Secretary Williams:

Enclosed via electronic filing on behalf of Pioneer Industrial Railway Co. ("PIRY") is PIRY's Reply to the comments filed on July 24, 2006 by Central Illinois Railway Company and Carver Lumber Company regarding the adequacy of rail service to Carver Lumber. As can be seen from the certificate of service attached, copies of this Reply are being served today on all parties of record in the two above-captioned proceedings. If there are any questions concerning this proposal, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

Enclosures

cc: Daniel A. LaKemper, Esq.
All Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-878

**CITY OF PEORIA AND THE VILLAGE OF PEORIA HEIGHTS, IL—ADVERSE
DISCONTINUANCE—PIONEER INDUSTRIAL RAILWAY COMPANY**

and

STB DOCKET NO. AB-1066X

**CENTRAL ILLINOIS RAILROAD COMPANY-- DISCONTINUANCE OF SERVICE
EXEMPTION – IN PEORIA COUNTY, IL**

REPLY TO JULY 24TH COMMENTS

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August 14, 2006

**Attorneys for Pioneer Industrial
Railway Co.**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-878

**CITY OF PEORIA AND THE VILLAGE OF PEORIA HEIGHTS, IL—ADVERSE
DISCONTINUANCE—PIONEER INDUSTRIAL RAILWAY COMPANY**

and

STB DOCKET NO. AB-1066X

**CENTRAL ILLINOIS RAILROAD COMPANY-- DISCONTINUANCE OF SERVICE
EXEMPTION – IN PEORIA COUNTY, IL**

PREFACE AND SUMMARY

The history of these two proceedings is complex due to the numerous related proceedings and the contentious nature of the dispute. Rather than repeat that history, Pioneer Industrial Railway Co. (“PIRY”) incorporates by reference the Surface Transportation Board’s (“STB’s” or “Board’s”) own excellent recitation of the nature of this dispute and procedural history as contained in the Board’s April 25, 2006 decision in these two dockets. In that decision, the Board determined to allow the Chairman’s order, which stayed the effect of the Board’s December 23, 2005 decision granting Central Illinois Railway Company’s (“CIRY”) discontinuance of service request, to remain in effect pending further comments from the parties regarding the adequacy of rail service to Carver Lumber Company (“Carver”). The decision also held all other motions and petitions (including PIRY’s Motion To Compel Discovery) in abeyance pending the filing of those comments. On July 24, Carver and CIRY filed their

comments. PIRY was given until August 14 to reply to those comments. PIRY hereby files this reply (“Reply”).

As a pure legal matter, the Board has three basic decisions to make: whether to grant reopening and reconsideration of its August 10, 2005 decision granting an adverse discontinuance of PIRY’s operating authority over the Kellar Branch; whether to lift the Chairman’s order and thus allow its decision to grant CIRY’s request to discontinue operations over the Kellar Branch to become effective or whether it should reconsider its decision and deny CIRY’s exemption request to discontinue operations; and whether to grant PIRY’s request that it be allowed to operate over the Kellar Branch via an alternative service order.¹ All of these decisions are interrelated and depend upon the Board’s conclusions with respect to whether or not the City of Peoria and the Village of Peoria Heights (collectively, “Cities”), and CIRY have met their burden of proof for the discontinuance exemption and lived up to their representations and commitments to provide Carver with adequate rail service via either the Kellar Branch or via an alternative route involving Union Pacific Railroad Co. (“UP”) and the newly built “western connection.”

Carver Lumber’s July 24 statement in this proceeding and its August 8 statement in F.D. No. 34917 clearly establish that Carver Lumber still is not receiving adequate rail service. The change from service via PIRY over the Kellar Branch to service via UP and CIRY over the western connection has eliminated competitive routing options, increased transit times 400%, and more than doubled Carver’s transportation charges, to say nothing of Carver’s roughly

¹ See Finance Docket No. 34917, Pioneer Industrial Railway Co. -- Alternative Rail Service — Central Illinois Railroad Company (“F.D. No. 34917” or “Alternative Service Order”), petition filed July 27, 2006. Pursuant to 49 CFR Sections 1114.4 and 1114.5, PIRY requests that the Board take judicial notice of the filings in the Alternative Service Order proceeding and, as necessary, incorporate those filings into the record of these proceedings.

\$60,000 in added costs when CIRY was not providing any service at all. Rail service is so bad that Carver, whose business depends upon cost-effective rail service, is at risk of going out of business with a loss of 50 employees unless PIRY's service to Carver over the Kellar Branch restored. As a result, the entire basis for the Board's rationale in granting the adverse discontinuance is no longer accurate, and the Board should grant PIRY's request to reopen and reconsider its Adverse Discontinuance decision, deny that application, and restore PIRY's rights to operate over the Kellar Branch. In so doing, the Board could grant CIRY's discontinuance (an action that PIRY and Carver would not oppose as long as PIRY's operating rights were restored), dismiss PIRY's request in Alternative Service Order as moot (or if already granted by the date of the Board's decision, allow that order to expire upon the effective date of a Board decision vacating its Adverse Discontinuance decision), allow for negotiation of joint rail/trail use of the Kellar Branch, and most importantly, restore efficient, cost-effective rail service to Carver Lumber.²

ARGUMENT

PIRY does not intend to repeat its arguments set forth in its petition to reopen the Board's Adverse Discontinuance decision, in its stay petition and its reply in support of Carver's reconsideration petition in the CIRY Discontinuance proceeding, or in the Alternative Service Order request. Rather, as directed by the Board, PIRY intends to reply to CIRY's July 24th comments and show why those comments, as supplemented by Carver's comments and recent filing, support the relief requested by PIRY and its proposed solution to these proceedings.

² It should be noted at the outset that CIRY admitted in its comments filed July 24, 2006 that its current service to Carver from the west is not viable. At page 7, CIRY states that "The 50 carloads per year annually shipped to Carver does not provide sufficient revenue to make it economically viable for an operator to operate the Kellar Branch from the east *or west*." [emphasis supplied].

A. Service Is Inadequate

CIRY is correct that rail service to Carver from the west began on or around March 20, 2006. Of course, that was about six months beyond the date that the Cities and CIRY promised this Board that service via the west would be available. Nonetheless, CIRY claims that service is adequate because it had not yet received any complaints from Carver and that Mr. Rob Happach, a former employee of Carver, had allegedly told Mr. Steve Van Winkle, Public Works Director for the City of Peoria, that “Carver could live with the transit time experience on shipments to Carver.”³ CIRY did not have the benefit of viewing Carver’s simultaneously filed comments, but the Board does. Those comments and the verified statement filed by Lee Miller, Carver’s Vice President of Operations, in the Alternative Service Order proceeding (attached hereto as Exhibit 1, “V.S. Miller”), tell a different story than that told by CIRY.⁴

Some of Carver’s comments regarding the adequacy of its service via the western connection bear repeating:

- “While rail service to Carver is now available via the Western Connection our strong belief is that that service is inadequate.” Carver’s July 24 Comments at 1.
- “The delivery of cars via the Western Connection represents a 400% greater delivery time than cars delivered via the Kellar Branch Line.” Carver’s July 24 Comments at 2.

³ Curiously, this alleged statement by Mr. Happach to Mr. Van Winkle is not verified or supported by either of the two parties to the conversation but by a “Mr. Oliver.” Mr. Oliver is not identified and does not appear to be in a position to verify Mr. Happach’s statements. As such, these assertions by CIRY deserve no weight. See CIRY Comments at 3-4 and Appendix 3. It should also be noted that Mr. Happach’s letter of April 17, which CIRY is fond of taking out of context, while extremely polite and conciliatory, made clear that Carver was dissatisfied with the “west connection” and that both rates and service were at issue.

⁴ Contrary to CIRY’s unsubstantiated assertions that Mr. Miller is unaware of the factual circumstances and that Mr. Happach’s outdated assertions should be followed, Mr. Miller has been a Vice President of Carver Lumber for eight and a half years and the person most directly responsible for arranging Carver’s transportation needs. He well knows what service Carver has received from both PIRY and CIRY.

- The loss of service via the Kellar Branch has deprived Carver of direct access to eight line-haul carriers and has left them captive to the UP. Carver's July 24 Comments at 2.
- "Carver is heavily dependent upon rail service to remain cost competitive and the loss of the Kellar Branch . . . threatens the livelihood of 50 employees." Carver's July 24 Comments at 3.
- "Carver Lumber has tried to work with both the City of Peoria (CIRY) and the Union Pacific to address the issue of guarantying minimum levels of service and rate stability to no avail." Carver's July 24 Comments at 3.
- "Carver Lumber Company needs and desires competitive and timely rail service to protect the livelihood of our employee/owners. The Western Connection is not, in our opinion, succeeding on either of those issues." Carver's July 24 Comments at 3.
- "CIRY service is not, and never has been adequate or satisfactory." V.S. Miller at ¶ 2.
- "I have no reason to believe that service or rates will improve in the future." V.S. Miller at ¶ 3.
- "Carver's concern is and always has been dependable, efficient, and cost-effective rail service. PIRY provided that to us for over nine years, but we were willing to accept another carrier, if they could so perform. CIRY has not so performed." V.S. Miller ¶ 5.

These are not the comments of a shipper who believes that its rail service from the west is adequate, as CIRY wants this Board to believe. It is obvious that CIRY has not made "good on its representation to provide adequate rail service to Carver Lumber and fulfill its common carrier obligation under 49 U.S.C. 11101," as required by the Board's April 25 decision.

Finally, CIRY's allegation that service from the west is an adequate replaced is refuted by its own admission that such service is not viable because Carver's business "does not provide sufficient revenue" at current rates. See footnote 2. Therefore, it can be assumed that CIRY will soon be raising Carver's rates, or asking for discontinuance authority for the "west connection," or both. By CIRY's own admission, service from the west is a failure.

B. CIRY's Rates Threaten Carver's Business

CIRY does acknowledge that Carver has complained about the new freight charges via the western route but places that blame on UP's portion of the route, not CIRY's charges. As Carver made clear in its comments, its freight rates have more than doubled – costing \$872.00

when delivered by PIRY via the Kellar versus \$1931.50 via delivery by the western route. Carver's July 24 Comments at 2. These increased freight rates actually threaten Carver's viability as a business. *Id.* at 3. It is simply incorrect to say, as CIRY claims at page 5 of its July 24 Comments, that the freight charges are not a legitimate concern to Carver.

It may be that the majority of this increase to date is due to UP's charges, but UP's charges wouldn't exist if CIRY hadn't insisted on changing the routing, cutting off competitive routing options and requiring UP to implement an awkward and inconvenient service to deliver cars for interchange to CIRY at the western connection. In other words, "but for" CIRY's actions, the rates would not have changed. UP has been a reluctant participant anyway because of operating concerns UP has with the western route and the fact that Carver's cars have to pass through UP's yard, and head north past Peoria, before turning and being switched by the southbound local on its way back to Peoria. The Cities and CIRY were well aware of these concerns, but nonetheless went ahead with their plans and are now trying to blame UP for the consequences of their actions. The Board should reject this attempt to shift blame. CIRY is to blame for the increased rates and service deficiencies, not UP.

Further, as noted above, CIRY's current rates do "not provide sufficient revenue to make it economically viable" to operate the "west connection." It can therefore be assumed that CIRY will raise its rates soon. This will only exacerbate Carver's situation, and, if the Kellar Branch is no longer available for PIRY to operate (which it had done profitably for many years), Carver's existence will be very much in doubt.

Transloading - *i.e.*, doing away with direct rail service to Carver altogether - is also not a solution, as suggested by CIRY. Transloading from the point of delivery to the Tazewell & Peoria Railroad would be slightly less expensive than the current all-rail option via the western

connection, but even then, the transload rate is almost double the previous PIRY Kellar Branch move.⁵ It is these high rates, whether via transload or an all-rail option, which threaten Carver's business. As Carver states, "Trucking and/or transloading material is not only cost prohibitive for Carver Lumber, but seems to be contrary to public policy in general. . ."

That a shipper may have to pay increased rates in the event an abandonment or discontinuance is not a controlling factor in such decisions (if the carrier can show that it is losing money from operating the line, which CIRY has not done), but such increased rates are one of the many factors the STB considers when determining whether to grant an abandonment or discontinuance. See Paducah & Louisville Railway, Inc.—Abandonment Exemption—In McCracken County, KY, STB Docket No. AB-468 (Sub-No. 5X) (served June 20, 2003), slip op. at 3 (Board balanced shipper's asserted increased shipping costs against carrier's proven economic loss from operating the line). Furthermore, this is not a generic abandonment or discontinuance case. These proceedings involve issues of service and rates, the common carrier obligation, and whether the Cities' and CIRY's representations in the Adverse Discontinuance proceeding regarding the feasibility of service via the western connection when compared to the Kellar Branch were accurate. Rates are certainly a factor in determining such service issues. See Keokuk Junction Railway Company—Feeder Line Acquisition—Line Of Toledo Peoria And Western Railway Corporation Between La Harpe And Hollis, IL, STB Finance Docket No. 34335 (served Oct. 28, 2005), slip op. at 5 (finding incumbent carrier's rate practices strong evidence of service inadequacy). Likewise, rates are certainly a factor in determining, under 49

⁵ CIRY's suggestion that transloading is less expensive is based upon a flawed reading of Mr. Hapbach's letter. That same letter makes clear that "direct rail service is very important to our company." In addition, transloading involves additional handling of goods, with concomitant potential for freight damage, as well as additional delays and perhaps additional capital expenditures.

U.S.C. § 10502, which is the section invoked in Docket No. AB-1066X, whether the requested action would be consistent with the rail transportation policy (§10101 (1), (5), (6), (10), and (12)) or subject the shipper to potential market abuse. See, e.g. Central Railroad Company Of Indiana – Abandonment Exemption – In Dearborn, Decatur, Frankly, Ripley, and Shelby Counties, In, STB Docket No. AB-459 (Sub-No. 2X)(STB served May 4, 1998).

C. Carver Would Not Be Worse Off Using The Kellar Branch

CIRY claims that regardless of the rate levels over the western connection, Carver would be no better off if CIRY's discontinuance were denied and CIRY was required to restore service over the Kellar Branch. CIRY July 24 Comments at 6. CIRY bases this statement on its assertion that it would take \$2,015,469 to rehabilitate the Kellar Branch.⁶ CIRY implies that the Cities would have to pay this amount and would seek reimbursement from CIRY, which would then raise the already inflated rates that Carver is charged.

There are several fallacies in this argument. First, assuming the rehabilitation costs are correct, which they are not, the attachment (Appendix 4) clearly indicates that these would be "state and/or federal funds," not City funds. The Cities would not need to seek reimbursement from CIRY as the Cities would not have been the funding source. Second, a \$2+ million expenditure is not required to rehabilitate the line to operating condition. Amazingly enough, the Cities' and CIRY's August 3 filing in the Alternative Service Order proceeding states that it would cost only about \$50,000 to rehabilitate the entire Kellar Branch to Class 1 track standards. This stands in marked contrast to the IDOT estimate of \$2+ million. Further, KJRY has

⁶ This figure comes from an Illinois Department of Transportation ("IDOT") document from 2000. This document is not only outdated, but it does not detail how that figure is arrived at, what level of rehabilitation that constitutes, whether this includes real estate costs, facility costs, or equipment costs, nor even the purpose it was produced for. To the knowledge of PIRY, which was the sole carrier at the time, it was also done without an on-site inspection.

established in the Alternative Service Order proceeding that even the \$50,000 figure was overinflated and based on the wrong standard. As KJRY's experienced track foreman showed in detail, the true cost to rehabilitate the line to the level where Carver could be safely served was \$9,496.11. See F.D. No. 34917, Rebuttal, Verified Statement of Roger Stice. At fifty carloads per year that is approximately \$190 per car, to "recoup" the cost in just a year. Thus, if CIRY's discontinuance were denied and CIRY was required to rehabilitate the Kellar Branch and then recoup that expense from Carver, it could do so at significantly less cost than the current costs to route traffic over the western connection. It is simply not true that Carver would be worse off if traffic were routed via the Kellar Branch rather than the western connection.

Of course, the rate concerns expressed by Carver would not be present if the Board were to reopen and reconsider its decision granting the adverse discontinuance against PIRY and thus allow PIRY to restore service. As noted in the Alternative Service Order filings, PIRY and Carver have agreed to contract rates that would govern any renewed PIRY service over the Kellar Branch and these rates can be extended for up to ten years. Furthermore, PIRY is confident that it can fund the required rehabilitation expense, serve Carver safely, and do so profitably. See F.D. No. 34917, Rebuttal, Verified Statements of Lee Miller and J. Michael Carr. As Mr. Miller so aptly stated:

Carver's concern is and always has been dependable, efficient, and cost-effective rail service. PIRY provided that to us for over nine years, but we were willing to accept another carrier, if they could so perform. CIRY has not so performed, and Carver should not be penalized for its patience and willingness to consider the City's proposals.

Carver respectfully requests that the Kellar Branch be immediately restored to operation by a willing carrier, PIRY.

F.D. No. 34917, Rebuttal, V.S. Miller at ¶6-7.

D. The Merits Of The Discontinuance Exemption Proceeding

As to the merits of CIRY's discontinuance proceeding itself, and as should be clear from the various filings in the various proceedings, if the Board were to restore PIRY's operating rights over the Kellar Branch, neither PIRY nor Carver would oppose the CIRY discontinuance. Carver's main concern is rail service via the Kellar Branch. If the Board is disinclined to restore PIRY's rights, then PIRY submits that CIRY has not met its burden to establish that the discontinuance would be consistent with the Rail Transportation Policy, is limited in scope, or would not otherwise result in market abuse to Carver Lumber. CIRY has not shown that the Kellar Branch cannot be operated profitably,⁷ and the shipper on the line opposes the discontinuance (if PIRY's service is not restored). In such circumstances, the use of an exemption process is simply inappropriate and the discontinuance should be denied. See Boston and Maine Corporation--Abandonment Exemption--In Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 75X) et al. (STB served Dec. 31, 1996), slip op. at 5-6; and Tulare Valley Railroad Company--Abandonment and Discontinuance Exemption--In Tulare and Kern Counties, CA, STB Docket No. AB-397 (Sub-No. 5X) (STB served Feb. 21, 1997), slip op. at 5-6; San Joaquin Valley Railroad Company—Abandonment Exemption—In Kings and Fresno Counties, CA, STB Docket No. AB-398 (Sub-No. 4X), slip op. at 4 (STB served May 23, 1997), aff'd (STB served Mar. 5, 1999).

If CIRY's discontinuance is denied, CIRY would be the only railroad with operating authority over the Kellar Branch, as it is now. Yet, PIRY has great concerns with such a result

⁷ PIRY operated the Kellar Branch profitably from 1997-2006. Contrary to the statement of CIRY, the loss of Gateway Milling was directly related to the uncertainty of rail service. Gateway, in fact, moved to a location that required trans-loading, and has since filed bankruptcy and gone out of business. PIRY is, nevertheless, confident it can attract new customers both in Pioneer Park and in the area served by the western connection, once the Kellar Branch connection to TZPR is restored and the uncertainty created by this controversy is resolved.

given that CIRD has a common carrier obligation over the line now but still deliberately refuses to route cars over the line, and has refused to take the very minimal steps necessary to maintain and rehabilitate the line since the first failed attempt to serve Carver over the line approximately a year ago. As supported by both PIRD and Carver, the best solution would be for the Board to grant PIRD's request to reopen and reconsider the Adverse Discontinuance decision, deny that application, and restore PIRD's rights to operate over the Kellar Branch. In so doing, the Board could grant CIRD's discontinuance (an action that PIRD and Carver would not oppose as long as PIRD's operating rights were restored), dismiss PIRD's request for an alternative service order as moot (or if already granted by the date of the Board's decision, allow its expiration upon the effective date of a Board decision reversing its Adverse Discontinuance decision), allow for negotiation of joint rail/trail use of the Kellar Branch, and most importantly, restore efficient, cost effective rail service to Carver Lumber.

CONCLUSION


It is patently clear that Carver, the Board, and PIRD have been the victims of a string of empty, broken promises by the Cities and CIRD. These false promises led the Board to allow the Cities to replace PIRD's excellent service with CIRD and at least initially, led to the Board granting CIRD's discontinuance. The end result has been a 400% increase in Carver's service times, a 100% increase in its rates, and additional costs of approximately \$60,000 from additional transload expense during the time CIRD was failing to provide service over the Kellar Branch, until the western connection actually got built. That certainly could not have been the Board's intent when it relied upon the Cities' and CIRD's promises, but the circumstances have changed.

It is now clear that the shippers have been harmed by the replacement of PIRY with CIRY. It is now clear that the promises by the Cities and CIRY were empty promises. CIRY has admitted that service "from the west" is illusory. Severing the connection to TZPR and making Carver captive to one line-haul carrier has resulted in inadequate service, exorbitant rates, and an unprofitable operation for CIRY. Neither Carver nor the west connection can long endure. One or both will soon perish.

As a result, the original findings are no longer valid and the Board's Decision in Adverse Discontinuance should be reopened and reversed, with PIRY's rights to operate being restored. Absent such action, the Board should deny the CIRY discontinuance exemption request, but in order to ensure that CIRY cannot continue to refuse Carver service over the Kellar Branch, grant PIRY's Alternative Service Order request.

Respectfully submitted,

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Attorneys for Pioneer Industrial Railway Co.

CERTIFICATE OF SERVICE

I, William A. Mullins, hereby certify that on this 14th day of August, 2006, copies of the foregoing Reply to the comments filed on July 24, 2006 by Central Illinois Railway Company and Carver Lumber Company regarding the adequacy of rail service to Carver Lumber have been served by first class mail, postage prepaid, or by more expeditious means of delivery upon all parties of record to this proceeding identified on the Surface Transportation Board's website.

A handwritten signature in black ink, appearing to read 'William A. Mullins', is written over a horizontal line.

William A. Mullins
Attorney for Pioneer Industrial Railway Co.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-878

**CITY OF PEORIA AND THE VILLAGE OF PEORIA HEIGHTS, IL—ADVERSE
DISCONTINUANCE—PIONEER INDUSTRIAL RAILWAY COMPANY**

and

STB DOCKET NO. AB-1066X

**CENTRAL ILLINOIS RAILROAD COMPANY-- DISCONTINUANCE OF SERVICE
EXEMPTION – IN PEORIA COUNTY, IL**

REPLY TO JULY 24TH COMMENTS

EXHIBIT 1

VERIFIED STATEMENT OF LEE MILLER FILED IN

FINANCE DOCKET NO. 34917

**PIONEER INDUSTRIAL RAILWAY CO.
– ALTERNATIVE RAIL SERVICE –
CENTRAL ILLINOIS RAILROAD COMPANY**

FINANCE DOCKET NO. 34917

**PIONEER INDUSTRIAL RAILWAY CO.
--ALTERNATIVE RAIL SERVICE--
CENTRAL ILLINOIS RAILROAD COMPANY**

**REBUTTAL IN SUPPORT OF PETITION
TO PROVIDE ALTERNATIVE RAIL SERVICE**

VERIFIED STATEMENT OF LEE MILLER

My name is Lee Miller, and I am the President of Carver Lumber Company ("Carver"). I have reviewed the Response of CIRY dated August 3, 2006, to Pioneer Industrial Railway Co.'s ("PIRY's") Request for Alternative Service over the Kellar Branch railroad line, which Carver supports.

The statement of Carver's former President, Rob Happach, which is cited in the response, is taken out of context. Mr. Happach was attempting to cooperate with the City and Central Illinois Railroad Co. ("CIRY"), and attempting to be conciliatory. Unfortunately, our willingness to cooperate and "wait and see" attitude, failed to produce satisfactory results. CIRY service is not, and never has been adequate or satisfactory. Carver is absolutely not better off with the "western connection", and renews its request that the Board order the restoration of service over the Kellar Branch.

CIRY continues to refuse to route cars over the Kellar Branch, despite the fact that it is still a common carrier railroad line. I am informed and believe that CIRY has no local presence, and CIRY does not seem to know when there is a car at interchange. Carver generally notifies CIRY that a car needs to be delivered. I have no reason to believe that service or rates will improve in the future, whereas PIRY and Carver Lumber Company have already entered into an Agreement as to rates, in the event that PIRY is permitted to resume service on the Kellar Branch. That agreement provides for the restoration of Carver's previous Kellar Branch rate structure, which is less than half what we are currently paying to get cars from the TZPR yard to our facility. It allows provides

for as-needed five day per week service. Carver has the option to keep this agreement in place for up to ten years if PIRY is able to permanently restore service over the Kellar Branch. I also reasonably believe that PIRY will and can attract additional business to the Kellar Branch, if the connection to the TZPR remains open, and it can market competitive service, as opposed to captive Union Pacific service.

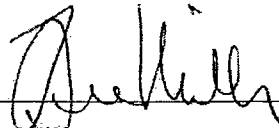
Carver believes that the restoration of service on the Kellar Branch is both feasible and necessary to its business. I have every reason to believe that PIRY is sincere in its desire to provide that service, and I believe that the suggestion that PIRY is a "front" for unnamed parties "opposed to the creation of a recreational trail" is pure fantasy.

Carver's concern is and always has been, dependable, efficient and cost-effective rail service. PIRY provided that to us for over nine years, but we were willing to accept another carrier, if they could so perform. CIRY has not so performed, and Carver should not be penalized for its patience and willingness to consider the City's proposals.

Carver respectfully requests that the Kellar Branch be immediately restored to operation by a willing carrier, PIRY.

VERIFICATION

I, Lee Miller, declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct. Further, I certify that I am qualified to file this Verified Statement. Executed this 8th day of August, 2006.



Lee Miller